



आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)</u> <u>Cr.A. No. 1245 of 1993</u> <u>SINGLE BENCH : HON. SHRI JUSTICE DHIRENDRA MISHRA,</u> 1. Shivkumar Chouhan s/o Jivrakhan Chouhan, aged 25 years. 2. Durpatbai, wife of Arjun Chouhan, Aged 28 years. All R/o village : Akhra, PS : Kunda Distt. Bilaspur (MP) <u>APPELLANTS</u> <u>Vs.</u> The State of Madhya Pradesh <u>RESPONDENT</u> Present: Shri I.S. Sahu, counsel for the appellants. Shri Pradeep Singh, P.L. for the State/respondent. <u>JUDGMENT</u> (2.8.2007) This criminal appeal is directed against the judgment dated 19th November 2003 passed in S.T.No. 288/90 whereby learned IV Additional Sessions Judge, Bilaspur, Link Court, Mungeli, holding the accused/appellant No. 1 Shivkumar guilty under Section 306 of the	

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	IPC, sentenced him to undergo R.I. for five years and accused/appellants No. 2 Durpatbai and accused Birdhibai have been convicted under Section 498-A of the IPC and each of them sentenced to undergo R.I. for two years. 2. Charge sheet was filed against the accused/appellants under Section 306 and 498A of the IPC for subjecting deceased Dhanbai, wife of appellant No.1, to cruelty and abetting her to commit suicide as she died on 19.5.1990 due to burn injuries sustained by her on 18.5.1990, while she was residing in her matrimonial home. 3. Learned counsel for the appellants submits that during pendency of this appeal appellant No.3 namely Birdhibai has died and appeal preferred by her stands abetted whereas appellant No.1 Shivkumar, husband of the deceased, has already been released from jail after completing the jail sentence imposed upon him, therefore, he is not pressing this appeal at his instance and advancing the argument only on behalf of appellant No. 2 Durpatbai. 4. Learned counsel for the appellant submits that conviction of appellant Durpatbai under Section 498A of the IPC is based on the dying declaration of deceased Dhanbai recorded by the Executive Magistrate P.S. Netam (PW-6) on 18.5.1990, on the date of incident, as also on the statements of PW-1 Fattesingh, father of the deceased and PW-2 Udasabai, mother of the deceased.	

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	5. Learned counsel for the appellant submits that appellant Durpatbai was residing in a separate house with a separate kitchen, there was no complaint against her prior to the incident that she harassed the deceased in any manner, however, after the death of Dhanbai on the basis of statements of father and mother of the deceased, who are highly interested witnesses, she was prosecuted in the aforesaid offence and convicted under Section 498A of the IPC. 6. Referring to the dying declaration of deceased Dhanbai, it was argued that in the dying declaration the deceased has stated that she committed suicide because she used to forbid her husband from visiting another lady namely Durpat and on the date of incident at about 6.00 p.m. when she returned from work, her husband came there after smoking cannabis and when she complained that rice is not available in the home, her husband started abusing her filthily, on account of which she poured kerosene on her from the lamp and set herself ablaze. At that time the appellant Durpat bai, her mother-in-law tried to extinguish the fire by pouring water, however, her husband was looking on. Referring to paragraph 7 of the statement of PW-1 it was argued that this witness has admitted that Shivkumar resided separately whereas Durpatbai and Birdhibai were residing in a separate room with their separate kitchen for the last 8-10 years. PW-5 Lachchiram, who is an independent witness, has also deposed about the separate living of Durpatbai and Birdhibai.	

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	7. On the other hand, learned counsel for the State supports the impugned judgment of trial Court. 8. Conviction of the appellant Durpatbai is based on the dying declaration of Ex.P/7 recorded by the Executive Magistrate P.S. Netam (PW-6) in the presence of Dr. N.S. Chandel (PW-3). The Executive Magistrate has categorically stated that the deceased was examined by Dr. Chandel and after it was certified that she is fully conscious and able to make statement, her statement was recorded, questions were put to her, she answered the questions and they were taken down by him. She was fully conscious throughout during recording of statement, which bears the certificate of Dr. Chandel of Ex.P/7-A. In cross-examination he has also stated that the statement was recorded as stated by the deceased, in the presence of Dr. Chandel. Thus, from the statement of PW-6 the prosecution has been able to prove the contents of dying declaration. 9. The deceased has stated in the dying declaration that she was married four years before to accused/appellant No.1 Shivkumar, she had set herself ablaze after pouring kerosene from the lamp at about 8.30 in the night, at that time her mother-in-law, sister-in-law and husband were present there, she was harassed by her husband, sister-in-law and mother-in-law, they had ousted her from the home, she was cooking in a separate kitchen, they abused her, her husband used to visit another lady Durpat, to which she objected and therefore, she was abused and beaten by her husband, mother-in-law and sister-	

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	in-law. She returned from work at about 6.00 p.m. and complained that there is no rice at home, her husband came after smoking cannabis and started abusing her filthily and out of desperation, she poured kerosene from the lamp on herself and set in fire. All the accused persons were present at home, they had seen when she set herself on fire and thereafter they poured water, her mother-in-law and sister-in-law extinguished the fire whereas her husband was looking on. The villagers also assembled and she was taken to Mungeli. She was tortured because she did not heed to their suggestions. She has further stated that they never harassed her parents nor made any demand as there is no custom of dowry in their society. On the other hand, PW-1 Fattesingh, has alleged that the accused persons harassed his daughter and subjected her to cruelty in the name of demand of dowry. His daughter was ousted by her husband and in-laws from the home and she stayed at his home for eight months. However, he agreed to send her daughter back on the promise of maternal uncle of accused Shivkumar that she will not be harassed, but harassment continued. His daughter had complained that the accused persons subjected her to cruelty. Similar is the statement of PW-2 Udasabai, mother of the deceased. She has stated that she used to send grains for her daughter. Her daughter complained that her in-laws and husband harass her and commit <i>marpeet</i> with her. Her daughter stayed at her parental home for 7-8 months.	

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	10. If we examine the statements of above two witnesses in the light of dying declaration where the deceased has categorically stated that she or her parents were never harassed in the name of demand of dowry by her husband and in-laws, this Court is of the considered opinion that versions of PW-1 & PW-2 is not worth reliance. 11. Now it is to be considered whether the allegation against appellant Durpatbai made by the deceased in her dying declaration amounts to cruelty as defined under Section 498A of the IPC?. Section 498A read as under: “498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. <i>Explanation.-</i> For the purposes of this section, “cruelty” means (c) an wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (d) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.” 12. If we examine the dying declaration in the light of above definition to cruelty, it is observed that there was a dispute between husband and wife on account of alleged relationship of her husband with another lady and immediate cause for committing suicide on the	

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	date of incident was the treatment meted out to her by her husband when she complained that rice is not available. Though there is allegation in the dying declaration against the present appellant Durpatbai that she also harassed the deceased along with her mother and that is why she was residing separately with a separate kitchen, but the cruelty alleged by the deceased against Durpatbai does not fall within the purview of Explanation (a) (b) to Section 498A of the IPC and basic dispute appears to be between the husband and wife in connection with illicit relationship of the husband with another lady. 13. For the aforesaid reasons, conviction of appellant Durpatbai under Section 498A of IPC cannot be sustained. 14. In the result, appeal preferred by appellant No. 1 Shivkumar is dismissed as not pressed and the appeal of appellant No. 2 Durpatbai is allowed. Her conviction under Section 498A and sentence imposed thereon, are set aside. She is acquitted of the above charge. It is stated that she is on bail, therefore, her bail bonds are discharged and she need not surrender.	Sd/- Dhirendra Mishra Judge